

ABOR Observer

March 2011

A rundown of the government and business activity over the last month, with particular focus on issues and items that are important to the Real Estate community.

Aspen —

Castle Creek hydro plant tabled

The debate on approving a new hydropower plant on Castle Creek is suspended until July while a mediation process attempts to resolve differences between independent experts, project opponents and city officials.

The decision by Aspen City Council came after American Rivers, a national conservation group, pledged to “use all means necessary” to stop the project if the city continues with its application for a federal regulatory exemption to speed the process up. American Rivers said the project is “clearly not” qualified for a small conduit exemption granted to projects that use existing infrastructure, excusing them from more rigorous licensing reviews.

Aspen is applying for the exemption on the basis that the project would use the newly-constructed drain line installed across the Marolt Open Space from Thomas Reservoir to the would-be site of the hydro turbine below Castle Creek Bridge.

City officials claim the multi-million-dollar pipe is needed to drain the reservoir in the event of flooding conditions, but critics believe no emergency exists and the pipe has been built purely for hydropower under false pretenses.

The delay was also prompted by the fact that independent experts hired by the Pitkin County maintain that city staff has overestimated stream flows in Castle and Maroon Creeks by as much as 30 percent.

P&Z throws Boomerang back to Council

The Aspen Planning and Zoning Commission recommended on a split vote to approve parking plans for an affordable-housing project at the former Boomerang Lodge site, sending the issue back to City Council.

The meeting dealt specifically with an appeal by project opponents of the commission's December vote to support the overall plan, based on a technicality involving a city staff error during the review process.

Developer representative Steve Stunda expressed worry that the project's value diminishes with every meeting, and appeared annoyed over a P&Z recommendation that a new parking study be conducted in the neighborhood surrounding the project site.

“Delay, delay, delay, that's what this is all about. Delay, delay, delay, until I'm bankrupt,” Stunda said.

Stunda represents a Virginia-based group that has already scaled down the project from 54 to 46 units and a height of four stories to three. They've revised the plan from free market to affordable housing and reduced the size from 54,000 to 41,500 square feet. The parking proposal calls for 33 underground spaces and 13 on the street, concepts already approved by the City Council in 2006 through the Planned Unit Development process.

AACP update delayed

Concerns raised by Aspen Chamber Resort Association board members and others in the community about the Aspen Area Community Plan have delayed planned adoption from April until at least June. The AACP, which provides guidance for elected officials on a host of land use issues, has been under review for two and a half years.

By the time the document is ready for City Council review and approval, there will be at least one new face on the council, meaning further possible delays. Two of four council seats are up for election on May 3, as well as the seat belonging to the mayor.

At the county level, the AACP will be approved by the county P&Z, not the Board of County Commissioners. It has been said that the BOCC will use the AACP as more of a guiding document, while at the city level, the document will carry more regulatory weight.

Given developer withdraws from negotiations with city

An anonymous developer who was proposing residential development on the site of the Given Institute has terminated negotiations with the city of Aspen.

SC Acquisitions LLC, which is under contract to buy the Given from the University of Colorado, informed the city last month that it would no longer be participating in the Ordinance 48 negotiations process, which the city uses to work with property owners to achieve historic preservation goals.

The move comes after City Council submitted a list of conditions it would like the developer to meet in order to secure building approvals, including a lower sale price for portions of the lot kept as open space and a longer time frame for the community to raise millions necessary to preserve the property. The withdrawal does not guarantee that the developer's desire to build four large homes on the site will come to fruition, however.

Art Museum construction to begin this fall

Aspen Art Museum Director Heidi Zuckerman Jacobson says construction of a new museum on the site of the now-closed Weinerstube Restaurant won't begin until fall.

The museum is planning to use what will soon be a vacant lot at the corner of Hyman Avenue and Spring Street for "a series of exhibitions, programs and community happenings" this summer. The downtown lot also could be used for the art museum's summer camp programs for kids, she said.

Zuckerman Jacobson said it was landowner Nikos Hecht's decision to ask the Wienerstube Restaurant to leave its location this winter.

Deal means cyclists to spend night in Aspen

A deal for Aspen to host a stage finish of the Quiznos Pro Challenge cycling race puts the city on the hook for an estimated \$190,000, but also guarantees that the racers, support crews, media and fans will spend a night in Aspen.

The race will stop in Aspen on Wednesday, Aug. 24, at the end of what is being billed as the "queen stage" of the race that begins in Gunnison and takes racers over two 12,000-foot mountain passes — Cottonwood and Independence.

Aspen lodges have pledged 420 free hotel rooms and 300 \$110-per-night hotel rooms over two nights. The Aspen Skiing Co. has been tapped to do the event planning.

Development fees being restructured

City officials are proposing to lower building permit fees for projects that have a total valuation of less than \$10,000, roughly 50 percent of the total number of permitted projects each year, while raising planning, zoning, building permit and engineering fees for large projects.

For instance, when a change order from a developer of a larger project comes in for review, the city would charge between \$250 and \$500. Currently, there is no charge. It also would charge \$250 to issue a conditional certificate of occupancy (CO), \$500 for a second conditional CO and \$1,000 if a third is required.

The Community Development Department is also proposing to increase the hourly rate for plan reviews from \$245 to \$315, a 28 percent increase. The engineering department also is proposing to charge developers an additional \$1-per-

square-foot, added on to building permit costs, for the engineering department's review work.

Wheeler restaurant finalists to present strategies

A March 15 City Council work session will give the public a chance hear from the four finalists for the city-owned Wheeler Opera House restaurant space currently occupied by Bentley's.

Those finalists include CP Restaurant Group, owner of CP Burger and three other local restaurants; Rieger Restaurant Group, which owns Kenichi and Bad Billy's; Walt Harris, owner of Ute City Bar and Grill and Syzygy restaurant; and Specialty Foods of Aspen, also known as The Cheese Shop. Bentley's did not make the cut.

The finalists need to respond to a list of potential lease conditions, including:

- Maintaining a separate retail storefront of about 500 square feet;
- Exploring ways to present small-scale entertainment options within the restaurant from time to time, primarily in support of Wheeler programs;
- Requiring that an affordable lunch/bar menu be available all day as an option for evening diners who would rather not order from the dinner menu.

The meeting is expected to include a short presentation on each restaurant concept, followed by a question-and-answer session. The city will renovate the site this summer and reopen it with a new tenant around Dec. 1.

Bike share funds on hold

The Pitkin County commissioners want more financial information and a business plan before they commit public dollars to the We-Cycle nonprofit bike sharing program, which hopes to put 100 three-speed bikes stationed at kiosks throughout Aspen for communal use this summer.

We-Cycle founders Philip Jeffreys and Mirte Mallory were lobbying the commissioners for \$34,200 to help secure \$200,000 in federal funding. They have already secured funding from the city of Aspen, RFTA, local businesses, the Aspen Institute and the Manaus Foundation.

Homeless housing at Marolt a "Go"

At least four local men or women who have spent nights sleeping on the floor at the homeless shelter at St. Mary's Catholic Church will be moving into apartments at Marolt Ranch this month.

Officials from the city of Aspen and the Aspen Valley Medical Foundation signed a lease to launch the pilot program to provide transitional housing for homeless people. Successful applicants for the units will be required to have steady jobs and pay some of their rent.

The program ends May 15, when summer students attending the Aspen Music Festival and School will begin moving into the complex.

ACRA hires Virginia firm to market Aspen

The Aspen Chamber Resort Association (ACRA) has agreed to a \$70,000 contract with a Virginia-based BCF Marketing to help research the local experience and launch a national campaign promoting Aspen as a spring, summer and fall destination. BCF was selected because it offers national media contacts and an ability to negotiate advertising rates that surpasses local or state firms.

Iselin field goes artificial

Aspen will be short an athletic field this summer, but by mid-September will have its second playing field of artificial turf to help accommodate the growing demand for team sports.

The new turf at Iselin will mean the Aspen skiers baseball team can play its home games at home in the early spring. The team often plays in El Jebel and has traveled as far as De Beque when no area field was in suitable shape.

The city plans to sell or give away the sod on Iselin once removal of the natural turf begins.

Ski hours extended

Aspen Skiing Co. has extended hours of operation for some of its lifts. Beginning on Feb. 19, many lifts have been running until 4 p.m.. They include the Silver Queen Gondola and Ajax Express lift on Aspen Mountain; Exhibition and Loge at Aspen Highlands; Summit at Buttermilk; and the Village Express lift, Big Burn lift and Elk Camp Gondola in Snowmass.

Pitkin County —

Crystal River residents challenge reservoir plans

Residents of the Crystal River Valley and the Crystal River Caucus have asked Pitkin County to challenge decades-old water rights that allow two dams on the river, including one that would inundate Redstone.

The Glenwood-based Colorado River Water Conservation District holds the conditional water rights on behalf of the West Divide Water Conservancy District. The rights, decreed in the 1950s, are the basis for two proposed water storage projects on the Crystal that were authorized by Congress in the mid-1960s but never built.

The West Divide Water Conservancy District must show continued progress on the dams, one of which would be called the Osgood Reservoir, in order for the Colorado Water Court to reauthorize the conditional rights, which are reviewed every six years.

The basis for the challenge of those rights is that “nothing has been done on the ground for 54 years” and that they are impeding local interest in seeking a Wild and Scenic River designation for the Crystal River.

Avalanche Creek mine owners face resistance

Owners of the last working mine in Pitkin County are eager to get an operating permit renewed and expanded by the U.S. Forest Service, allowing year-round, 24 hour operations.

But neighbors at Swiss Village experienced damage to their homes and shattering of their tranquility from prior use of explosives at the mine, and are asking why they should have to bear those costs again.

The U.S. Forest Service will issue a ruling this spring on whether extensive operations can begin this year at the Mystic Eagle Mine, located just off of Highway 133 on Avalanche Creek Road, or a full blown environmental assessment is required.

Public comments are being accepted until Friday, March 18. Written comments can be addressed to: White Banks Project, c/o Skye Sieber, Project Leader, 0094 County Road 244, Rifle, CO 81650 or they can be e-mailed to wrnf_scoping_comments@fs.fed.us.

Building permit extensions sought

For the second year in a row, the Pitkin County building department has received requests to extend dozens of building permits that already have expired or are going to expire this year. Other jurisdictions around the state have granted permit extensions, including the city of Aspen.

Some projects would face new land-use regulations if the existing building permit expires, and be required to obtain a new land-use approval and permit to proceed.

Woody Creek neighborhood receives \$100K to start metro district

The Pitkin County commissioners committed \$100,000 toward the formation of a metro district to help homeowners in the Woody Creek Subdivision, formerly known as the trailer park, levy funds to pay off debt from various infrastructure projects.

The metro district still requires approval by a majority of residents. Commissioners George Newman and Rob Ittner

suggested the county contribute the roughly \$60,000 and let the homeowners pick up the rest of the estimated \$110,000 needed to set it up, but they were on the losing end of a 3-2 vote.

Recreation planning under way for Droste parcel

A plan to link 10 properties owned by the city of Aspen, Pitkin county and Snowmass Village — with the recently-purchased 845-acre Droste Property off Brush Creek Road — would create a 2,500-acre mountain park with extensive new trail connections for mountain bikers, hikers and equestrians.

Before any of that happens, however, a wildlife study and an intergovernmental agreement need to be completed. A presentation by Pitkin County Open Space and Trails representatives before Snowmass Village Town Council showed that reaching such an agreement may be a challenge.

Droste was a key open space acquisition because it's in the center of nine other publicly-owned properties: Hidden Valley (Snowmass); Upper North Mesa (Snowmass); Seven Star parcels (Pitkin County); Cozy Point South (Pitkin County); Cozy Point (Aspen); Aspen-Mass (Aspen); Mills (Aspen-Pitkin County); Airport Bluff (Pitkin County) and Burlingame Ranch West (Aspen).

County refuses to fund road upkeep

The Pitkin County Commissioners balked at spending \$2 million on a road project that would result in badly needed repairs along Upper River and McClain Flats Roads, because it would deplete the county's existing capital fund road upkeep.

Both the county public works director and county engineer recommended a 3.5-mile project that would include reconstruction of 2.5 miles of Upper River Road, and an overlay on about a mile of the road up toward McLain Flats from the Woody Creek Road intersection.

The project would need all of the \$1.78 million in the road capital fund, a sum built up through savings on projects over a decade or so, and require \$260,000 from elsewhere within the county's budget. The county's general fund contains \$2.8 million in unallocated money and a separate facilities fund contains \$5.6 million; either could be tapped for the road work. The county also has a separate, \$4 million contingency fund.

County OKs \$500,000 for library expansion

Pitkin County commissioners agreed to spend \$519,384 for pre-construction plans on a proposed library expansion.

In all, library officials expect to spend \$1,176,375 for architectural engineering, land use process and consultant fees for the project. The county has already contributed about \$110,000 on the proposed expansion, which would add 9,400-square-feet on the eastern side of the existing, 31,900 square-foot facility.

In all, the expansion is projected to cost approximately \$10 million. Voters would need to approve \$5 million in debt to cover construction costs, on top of \$5.3 million the library already has in a private endowment.

County enters trails dispute

Pitkin County has been drawn into a legal dispute between two midvalley landowners over use of a route to access grazing land on the Crown.

Tom Waldeck, owner of Emma Farms, the former Cerise Ranch in Emma, has filed a "quiet title" action in court claiming a prescriptive easement on about 300 yards of rough road that crosses the neighboring Happy Day Ranch. The road allows him to drive his cattle between his ranch and a grazing allotment on the Crown, the public lands at the base of Mount Sopris.

Ginny Parker and her family, owners of Happy Day Ranch, say the Cerise family used the route with the permission over the years, which would mean Waldeck has no claim to a prescriptive right to the road.

The county is involved because its Open Space and Trails program holds a conservation easement on 25 acres on Parker's ranch, as does the Aspen Valley Land Trust. Open Space and Trails is also discussions with Waldeck about a conservation easement on his property, and AVLТ already holds his agricultural land in conservation.

Parker said she doesn't mind Waldeck using the route to drive cattle via horseback, but objects to the motorized use by dirt bikes, ATVs and such. But Waldeck says motorized access for the cattle operation is essential and threatened to build an approved subdivision of seven homes, each up to 8,750 square feet, if he doesn't get his way.

Commissioner given pass on housing rules

The Aspen Pitkin County Housing Authority has found former county commissioner Wayne Ethridge in violation of its rules because he is illegally renting out an Aspen Village trailer he owns while living in another deed-restricted affordable housing unit at W/J Ranch.

But the housing board voted to let Ethridge off the hook, provided he gets an OK from the Aspen Village homeowner's association.

The housing authority board had the power to force Ethridge to sell the trailer to a qualified county resident, or to force his ex-wife to sell the W/J unit where they live. A staff memo recommended that the housing board force a sale.

Ethridge has been unsuccessfully trying to sell the Aspen Village property, but said he would lose much of his life savings if he sold it in the current market, which is virtually non-existent for deed-restricted trailers.

The board gave him 30 days to gain approval from the HOA to take a "leave of absence" from residence in the unit. The board also mandated Ethridge aggressively ramp up his efforts to sell the trailer.

Smuggler management plan involves logging

Logging to improve wildlife habitat is among the recommendations in a draft 10-year forestry plan for the Smuggler Mountain Open Space near Aspen.

If the plan is adopted, the throngs of people who hike and bike up Smuggler will find significant changes under way this summer on the 234 acres of county and city owned open space, with three clearings created within the lodgepole pine forest near the viewing platform.

The draft Smuggler forest plan will be presented to the city and county open space boards on March 10 and a public open house will also be scheduled. Public comment is being taken through March 15. The city and county are expected to adopt a final plan in April.

Forest Service declines to take Toklat cabin

The Forest Service has asked Pitkin County to relocate the historic Sunnegga cabin, built in 1957 by Stuart Mace, from federal land near Ashcroft. The cabin, which was originally a gift shop at Toklat, the storied dog-sledding operation and lodge run by Stuart and Isabel Mace. The county had offered the cabin to the Forest Service as a warming hut after the federal agency took control of the land where it was located.

Merry go Round to be remade

The Merry-Go-Round Restaurant at Aspen Highlands will get a \$5.8 million overhaul this summer and reopen in time for the 2011-12 season. Aspen Skiing Co. spokesman Jeff Hanle said the existing structure would remain, but under go a "major, major remodel." The renovation is the only major on-mountain capital improvement project announced so far planned for summer 2011.

Commissioners pondering tax questions

A majority of the Pitkin County Commissioners agreed that asking for renewal of the Healthy Community Fund tax in the fall is a priority this year because it finances a host of health and human services programs. The tax will expire at the end of 2012. Voters may also be asked to approve funding for the county ambulance district and Pitkin County Library

expansion.

County looks at pot regulations

Pitkin County is looking for a strategy that relies on common-sense regulation for the medical marijuana industry. Some proposed regulations include minimum distance requirements between grow operations and/or requiring pot to be grown indoors. The Redstone Community Association has voted to bar dispensaries on Redstone Boulevard, but other neighborhood caucuses have remained silent on the question.

Snowmass Village —

Judge orders Viceroy deposits returned

A Pitkin County District Court Judge ordered Related Cos. and other owners/developers of Base Village to return the deposits to 65 contracted purchasers of Viceroy Snowmass units and release them from their purchase agreements.

Judge Denise Kay Lynch reversed her original decision, ultimately agreeing with the plaintiffs' attorneys maintained that the Interstate Land Sales Full Disclosure Act applied to this case. At issue was the discrepancy of square footage size of each buyer's purchase agreement as compared to the actual, constructed square footage of the Viceroy units.

Plaintiffs maintained they were on the hook for between \$7 and \$8 million in lost square footage because of the plat discrepancies.

Scientists set to resume Ziegler dig

An agreement involving the Denver Museum of Nature & Science, the Snowmass Water and Sanitation District and the State Historical Preservation Office allows crews to excavate until July 1 in the same area of Ziegler Reservoir where most of the 600 or so fossils were found.

As many as 40 people will be working at the dig site. A team of 34 scientific experts from 15 institutions in the United States Canada and England has been assembled to study the discoveries.

The town government is planning to use empty space on the Snowmass Mall this summer for a "discovery center" with video displays, photographs and possibly bones bound for the museum.

Base Village foreclosure moves ahead

A major roadblock to a foreclosure sale of the Snowmass Base Village project was lifted after a Denver-based construction firm failed to submit a \$15 million bond before a court-imposed deadline last month.

CFC/PCL Construction was ordered to submit the bond if it wanted to delay the foreclosure sale until after a July trial to resolve millions of dollars in mechanics liens. The bond was required in order to protect lenders from further losses incurred from a longer delay in the foreclosure.

The European lenders, led by Hypo Real Estate Capital Corp., hope to proceed with the sale by March 9 at the earliest and no later than March 30.

Basalt —

Willits Fire involved accelerants

Basalt investigators told Willits residents last month that an accelerant was applied liberally to one side of the house at 510 Lake Court before it was badly damaged on January 12 by an arson fire.

The accelerant, which fire fighters smelled like white gas, was poured out of a second story window. Investigators assured homeowners they are working to make an arrest. Safeco Insurance is offering a reward of up to \$25,000 for information leading to a conviction.

A timeline on the response to the fire showed the first truck arrived 13 minutes and 9 seconds after firefighters were paged. The fire was reported at 8:19:47 p.m. The on-call fire officer that evening arrived at 8:25:13 p.m. to size up the

fire and communicate with responding teams. The first fire engine on the scene was hooking up to the nearest fire hydrant at 8:33:14 p.m.

Basalt Chamber looking for new ways to draw visitors

The Basalt Chamber of Commerce will no longer organize the River Days festival, a centerpiece of Basalt's summer events for over a decade. The event requires an extraordinary investment in planning and is "running out of steam," says Bennett Bramson, the new chamber president.

Chamber officials also think the summer lunch parties hosted by the town government the last two years have limited value to local merchants.

The chamber instead wants events that bring people in regularly. One will be Second Saturdays during summers and falls, modeled after Carbondale's First Fridays, an extremely popular event that draws business to shops, restaurants art galleries and artist studios. The chamber will also continue sponsoring outdoor concerts by local musicians and bands on Wednesday evenings.

The chamber is also asking for new signs along Highway 82 directing people into the town center.

Carbondale/Glenwood Springs —

Re-1 begins budget cutting hearings

A series of public sessions on \$3.5 million in budget cuts begins with the regular March 9 Roaring Fork School District board meeting. The first meeting will address cuts made to this year's budget, and some proposed cuts and revenue generation options for next year's. Additional meetings are scheduled for March 23, April 13 and April 20.

In addition to the live venue at the Re-1 District Office in Glenwood Springs, the meetings are to be simulcast via the Internet to audiences in the Carbondale and Basalt middle school auditoriums.

CMC eyes downtown Glenwood property

Colorado Mountain College is in talks to purchase the three-story red brick building at the corner of Eighth Street and Grand Avenue in downtown Glenwood Springs.

Purchase of the building, which is actually two adjoining buildings, would allow the college to consolidate its district offices under one roof.

The building is owned by partners Walter Jenkins, Raydean Acevedo and Dennis Krueger, who purchased it in 2003 from the Aspen Research Group for \$3.7 million. The building is presently assessed at a total value of \$5.1 million, according to the Garfield County Assessor's property database.

STATE —

SB 15-Protections for Homeowner's Insurance gains initial approval in Senate

SB 15 by Sen. Joyce Foster (D-Denver) and Rep. Joe Miklosi (D-Denver) passed on Second Reading in the Senate this morning. This bill seeks to prohibit an insurance company from cancelling or refusing to renew a homeowner's insurance policy if the homeowner has filed two claims or fewer in the previous 5 years. SB 15 also excludes claims for which an insurance company paid nothing from an insurance claim account and lengthens the notice of cancellation or refusal to renew period from 30-45 days. If you haven't invested in the Political Survivor Fund yet this year please do so. This is the best investment you can make toward your career!

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